

# **Plaintiffs' Exhibit 55**

**In the Matter Of:**

*UNITED STATES vs*

*GOOGLE*

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*BRIAN O'KELLEY*

*September 29, 2023*

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<p style="text-align: right;">Page 150</p> <p>1 header bidding would have won,          2 regardless of price -- of auction          3 pricing.          4 So I think this is the          5 challenge of a lot of these          6 points, is, is there a justifiable          7 business reason to do this. Can          8 you justify it to your advertiser.          9 This also plays into          10 commercial practices. If Google's          11 client said, we don't care, that's          12 fine, you know, do they have an          13 obligation to bid fairly?          14 I think that's what we kept          15 running into back at this phase of          16 our -- you know, AppNexus's          17 existence, was trying to convince          18 people or explain some of these          19 terms. You know, it's not a          20 coincidence that Google spends          21 60 percent of your money on its          22 own ad exchange.          23 It's not because it's          24 better. It's not because there's</p>	<p style="text-align: right;">Page 151</p> <p>1 any difference in supply. There's          2 not any reasonable way to explain          3 that, except for some kind of bias          4 in how they are spending money.          5 BY MS. WOOD:          6 Q. What is Google's open          7 bidding product?          8 MR. JUSTUS: Objection.          9 Form.          10 THE WITNESS: So Google --          11 after, I don't know, a year or two          12 of header bidding getting real          13 traction, I think Google felt very          14 threatened by fair competition, is          15 my perspective.          16 And they decided that they          17 were going to open up dynamic          18 allocation to other ad exchanges          19 and build their own competitor to          20 header bidding. And they called          21 it, at that point, I think it was          22 called EBDA -- I forget what it          23 stood for. But basically --          24 BY MS. WOOD:</p>
<p style="text-align: right;">Page 152</p> <p>1 Q. Exchange bidding?          2 A. Exchange bidding. And they          3 got a better name, which is Open Bidder.          4 And the idea was that any          5 SSP could bid into the same auction as          6 AdX, and then the benefit of, you know,          7 adjusting the price -- adjusting the          8 priority in the waterfall, like AdX,          9 would apply to these other exchanges.          10 And their hypothesis was          11 that this would be giving all of these          12 exchanges the same basic benefit as          13 header bidding and that publishers would          14 then turn off header bidding in          15 preference for open bidding.          16 Q. And why did Google want, to          17 your understanding, publishers to turn          18 off header bidding?          19 MR. JUSTUS: Objection.          20 Form.          21 MR. WEISS: Objection.          22 THE WITNESS: Well, our          23 perception was that publishers          24 using header bidding would</p>	<p style="text-align: right;">Page 153</p> <p>1 actually route more money away          2 from Google. And so Google would          3 make less money when a lower          4 percentage of the overall          5 impressions when publishers had          6 header bidding turned on.          7 BY MS. WOOD:          8 Q. Was AppNexus a customer of          9 Google's open bidding product?          10 A. No, AppNexus was not.          11 Q. Why not?          12 A. Two reasons. One was that          13 Google had a rule that said that if you          14 participate in open bidding, you could          15 not bring unique demand. You could not          16 bring -- you could not be a DSP. Only          17 SSPs could participate.          18 And because AppNexus was          19 both, we couldn't -- we weren't really          20 allowed to participate. We'd have to --          21 there's all these rules that we weren't          22 willing to meet. That's the primary          23 reason, was it just wasn't built in a way          24 that we felt was fair. That's --</p>

<p style="text-align: right;">Page 154</p> <p>1 Q. Why did you feel it was                  2 unfair?</p> <p>3 MR. JUSTUS: Objection.                  4 Form.</p> <p>5 THE WITNESS: Because Google                  6 could do whatever they wanted.                  7 Google could bring AdSense demand                  8 to the table, they could bring                  9 their DSP to the table. But we                  10 couldn't.</p> <p>11 They also were charging a                  12 5 percent fee, whereas with header                  13 bidding there was no fee.</p> <p>14 Also, header bidding was                  15 open source and fully in the                  16 control of the publisher. Our                  17 fear was that as soon as Google                  18 got rid of header bidding, they                  19 would just change the rules on                  20 open bidding to benefit themselves                  21 again, after killing all their                  22 competitors. We were not in any                  23 way interested in making our                  24 business dependent upon Google's</p>	<p style="text-align: right;">Page 155</p> <p>1 business rules.</p> <p>2 BY MS. WOOD:</p> <p>3 Q. The 5 percent fee that                  4 came -- that Google charged for open                  5 bidding, how was that fee paid, if you                  6 know --</p> <p>7 MR. JUSTUS: Objection to                  8 form.</p> <p>9 THE WITNESS: I believe it                  10 was a rev share. You know, when                  11 you bid, they would just take it                  12 out of the bid.</p> <p>13 BY MS. WOOD:</p> <p>14 Q. And to your knowledge, when                  15 AdX competes against other non-Google                  16 exchanges via open bidding, does AdX pay                  17 that 5 percent fee?</p> <p>18 MR. JUSTUS: Objection to                  19 form.</p> <p>20 THE WITNESS: I don't think                  21 so, but I'm not sure.</p> <p>22 BY MS. WOOD:</p> <p>23 Q. How, if at all, would the                  24 fact that third-party exchanges pay a</p>
<p style="text-align: right;">Page 156</p> <p>1 5 percent fee, but AdX does not pay a                  2 5 percent fee, impact those third-party                  3 exchanges' ability to compete in open                  4 bidding?</p> <p>5 MR. WEISS: Objection.                  6 MR. JUSTUS: Objection.                  7 Form.</p> <p>8 THE WITNESS: Going back to                  9 basic auction dynamics, if the                  10 demand is the same, just assuming                  11 that everyone had the same demand,                  12 the DSP bids a dollar on each of                  13 these platforms. To win you have                  14 to pay the highest price. So if                  15 you're paying an additional                  16 5 percent fee, you have to take                  17 that out of your take rate.</p> <p>18 So anyone else -- because if                  19 you just take it out of the gross,                  20 you're going to lose. So to win                  21 you have to take a 5 percent lower                  22 margin than AdX. So if AdX is                  23 charging 20 percent, you're going                  24 to have to charge 14 percent to</p>	<p style="text-align: right;">Page 157</p> <p>1 even be at parity with Google. So                  2 it just gives Google a huge profit                  3 advantage.</p> <p>4 It also means that as                  5 auctions get more competitive, you                  6 know, Google has 5 percent more to                  7 play with. If they wanted to take                  8 a margin hit, they could                  9 potentially just, you know,                  10 imagine that they took a 4 1/2                  11 percent margin, they'll always                  12 win. No one can compete with                  13 Google. They have, effectively, a                  14 trump card to win any auction they                  15 want to because they have a lower                  16 fee.</p> <p>17 BY MS. WOOD:</p> <p>18 Q. Does the open bidding                  19 auction allow Google greater access to                  20 data than header bidding?</p> <p>21 MR. JUSTUS: Objection to                  22 form.</p> <p>23 THE WITNESS: Well, in the                  24 header bidding auction, the</p>

Page 194

1 So -- and I'm sorry. I'm  
 2 going to retread just a little bit of  
 3 ground for the cleanliness of the record,  
 4 but not a lot of it.  
 5 So what was AppNexus?  
 6 **A. AppNexus was a technology**  
 7 **company that built solutions in the**  
 8 **advertising space.**  
 9 Q. Did AppNexus offer tools to  
 10 help publishers sell ad space?  
 11 **A. Yes.**  
 12 Q. And did it offer tools to  
 13 help advertisers buy ad space?  
 14 **A. Yes.**  
 15 Q. And so AppNexus competed  
 16 with Google in providing advertising  
 17 technology to buyers and sellers of  
 18 digital ads; is that correct?  
 19 MS. WOOD: Objection to the  
 20 form. Leading.  
 21 BY MR. JUSTUS:  
 22 Q. You can answer.  
 23 **A. Yes.**  
 24 Q. Mr. O'Kelley, what was your

Page 196

1 form.  
 2 **THE WITNESS: Yes.**  
 3 BY MR. JUSTUS:  
 4 Q. Was it AppNexus's biggest  
 5 client?  
 6 MS. WOOD: Objection to the  
 7 form.  
 8 **THE WITNESS: They were our**  
 9 **largest client by revenue when we**  
 10 **sold.**  
 11 BY MR. JUSTUS:  
 12 Q. What was your role in  
 13 developing AppNexus's relationship with  
 14 Microsoft?  
 15 **A. I was involved in early**  
 16 **sales conversations with them in 2009 and**  
 17 **'10 and negotiated the investment and**  
 18 **commercial relationship in the sort of**  
 19 **first cycle.**  
 20 **And then I remained involved**  
 21 **in that relationship, largely as an**  
 22 **executive sponsor, through the end of the**  
 23 **-- till we sold the company.**  
 24 Q. What does it mean to remain

Page 195

1 role at AppNexus?  
 2 **A. I was the CEO and the**  
 3 **co-founder.**  
 4 Q. And when did you found  
 5 AppNexus?  
 6 **A. In September of 2007.**  
 7 Q. And when did you leave your  
 8 role as CEO at AppNexus?  
 9 **A. We sold the company to AT&T**  
 10 **in August of 2018, and I stepped down as**  
 11 **CEO as part of that, and I stayed at the**  
 12 **company for six more months in a**  
 13 **transition role.**  
 14 Q. Was Microsoft an early  
 15 investor in AppNexus?  
 16 **A. Microsoft invested in 2010.**  
 17 Q. And what kind of investment  
 18 did Microsoft make in AppNexus in 2010?  
 19 **A. That was our Series C round.**  
 20 **Microsoft invested \$42 million of the**  
 21 **\$50 million of investment in that round.**  
 22 Q. Was Microsoft a major client  
 23 of AppNexus?  
 24 MS. WOOD: Objection to the

Page 197

1 involved as an executive sponsor?  
 2 **A. So because they were a large**  
 3 **client, we had a dedicated account**  
 4 **manager or account lead who was**  
 5 **responsible for maintaining the**  
 6 **commercial relationship with Microsoft.**  
 7 **But every quarter, give or take, we'd**  
 8 **have a quarterly business review, and**  
 9 **either me or the president of AppNexus,**  
 10 **Michael Rubenstein, would come in,**  
 11 **typically in Seattle. We'd fly out, and**  
 12 **we'd have a sort of review with senior**  
 13 **executives from Microsoft to check in on**  
 14 **the status of the relationship and, you**  
 15 **know, talk about priorities and, you**  
 16 **know, things like that.**  
 17 Q. Mr. O'Kelley, are you  
 18 familiar with the term "remnant  
 19 inventory"?  
 20 **A. I am.**  
 21 Q. What is it?  
 22 **A. Remnant inventory is a term**  
 23 **to describe -- this is more in the**  
 24 **pre-programatic era. A publisher would**

Page 346

1 more?

2 MR. JUSTUS: Another hour.

3 MS. WOOD: If you want to

4 talk for an hour about AdX's take

5 rates, sure.

6 MR. JUSTUS: We don't have

7 any more questions.

8 THE VIDEOGRAPHER: 3:52. We

9 are off the record.

10 \*\*\*\*\*

11 (Excused.)

12 (Deposition concluded at

13 approximately 3:52 p.m.)

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Page 348

1 INSTRUCTIONS TO WITNESS

2

3 Please read your deposition

4 over carefully and make any necessary

5 corrections. You should state the reason

6 in the appropriate space on the errata

7 sheet for any corrections that are made.

8 After doing so, please sign

9 the errata sheet and date it.

10 You are signing same subject

11 to the changes you have noted on the

12 errata sheet, which will be attached to

13 your deposition.

14 It is imperative that you

15 return the original errata sheet to the

16 deposing attorney within thirty (30) days

17 of receipt of the deposition transcript

18 by you. If you fail to do so, the

19 deposition transcript may be deemed to be

20 accurate and may be used in court.

21

22

23

24

Page 347

1

2 CERTIFICATE

3

4

5 I HEREBY CERTIFY that the

6 witness was duly sworn by me and that the

7 deposition is a true record of the

8 testimony given by the witness.

9

10 It was requested before

11 completion of the deposition that the

12 witness, BRIAN O'KELLEY, have the

13 opportunity to read and sign the

14 deposition transcript.

15

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*Michelle L. Gray*

MICHELLE L. GRAY,  
A Registered Professional  
Reporter, Certified Shorthand  
Reporter, Certified Realtime  
Reporter and Notary Public  
Dated: October 3, 2023

(The foregoing certification  
of this transcript does not apply to any  
reproduction of the same by any means,  
unless under the direct control and/or  
supervision of the certifying reporter.)

Page 349

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2 E R R A T A

3 - - - - -

4 PAGE LINE CHANGE

5 \_\_\_\_\_

6 REASON: \_\_\_\_\_

7 \_\_\_\_\_

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22 REASON: \_\_\_\_\_

23 \_\_\_\_\_

24 REASON: \_\_\_\_\_

Page 350

1  
2 ACKNOWLEDGMENT OF DEPONENT  
3  
4 I, \_\_\_\_\_, do  
5 hereby certify that I have read the  
6 foregoing pages, 1 - 351, and that the  
7 same is a correct transcription of the  
8 answers given by me to the questions  
9 therein propounded, except for the  
10 corrections or changes in form or  
11 substance, if any, noted in the attached  
12 Errata Sheet.  
13  
14  
15 \_\_\_\_\_  
16 BRIAN O'KELLEY DATE  
17  
18  
19 Subscribed and sworn  
20 to before me this  
21 \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
22 My commission expires: \_\_\_\_\_  
23  
24 Notary Public

Page 351

1 LAWYER'S NOTES  
2 PAGE LINE  
3 \_\_\_\_\_  
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HIGHLY CONFIDENTIAL

**ERRATA SHEET FOR THE TRANSCRIPT OF BRIAN O’KELLEY**

Case Name: In Re: Google Antitrust Investigation

Dep. Date: September 29, 2023

Deponent: Brian O’Kelley

Page	Line	Correction	Reason for Correction
184	17	Change “participant” to “participants”	Transcription error

/s/ Isabel Agnew

October 18, 2023



*United States v. Google LLC*

Google's Errata Sheet for Google's Counsel's Questions in the Transcript of the 30(b)(1)  
Deposition of Brian O'Kelley (September 29, 2023)

Page	Line	Now Reads	Should Read	Reason
197	24	pre-programatic	pre-programmatic	Transcription error
198	8	guarantee	guaranteed	Transcription error
201	17	inventory, mobile inventory	inventory or mobile inventory	Transcription error
209	4	DirectTV	DirecTV	Transcription error
220	17	Ms. Scott Morgan	Ms. Scott Morton	Transcription error
223	14	Ms. Scott Morgan's	Ms. Scott Morton's	Transcription error
225	10	Ms. Scott Morgan's	Ms. Scott Morton's	Transcription error
249	20	YieldX	Yieldex	Transcription error
250	14	YieldX	Yieldex	Transcription error
250	15	YieldX	Yieldex	Transcription error
259	2	YieldX	Yieldex	Transcription error
259	13	YieldX	Yieldex	Transcription error
259	15	YieldX	Yieldex	Transcription error
260	13	YieldX	Yieldex	Transcription error
260	20	YieldX	Yieldex	Transcription error
261	4	YieldX	Yieldex	Transcription error
263	4	Plus SSB	Plus SSP	Transcription error
263	19	programatic	programmatic	Transcription error
263	21	that integrating AppNexus SSP	that integrating the AppNexus SSP	Transcription error
265	20	programatic	programmatic	Transcription error
269	15	direct sells	direct sales	Transcription error
270	21	server	serving	Transcription error
279	8	win prizes	win prices	Transcription error
295	15	Ms. Scott Morgan	Ms. Scott Morton	Transcription error
296	11	my clients	my comments	Transcription error
301	1	paper on Ms. Scott Morton's paper	comment on Ms. Scott Morton's paper	Transcription error
303	1	Google had a strong argument	Google has a strong argument	Transcription error
307	4	"Don't know	"Dunno	Transcription error
311	24	programatic	programmatic	Transcription error
313	7	programatic	programmatic	Transcription error
315	10-11	you tell the exchange, say, from The New York Times	you tell the exchange it's from, say, The New York Times	Transcription error
315	24	what they expect to buy	what they expect to block	Transcription error

319	15	programatic	programmatic	Transcription error
324	20	distributive	distributed	Transcription error

I have read the transcript of the 30(b)(1) deposition of Brian O’Kelley and have listed all changes and corrections to my questions above, along with my reasons therefore.

Date: 10/23/2023

Signature: